

Background

The appeal is filed by Advisory Neighborhood Commission 6B ("ANC 6B"). This is an appeal of Building Permit B2103902 issued by the Department of Consumer and Regulatory Affairs ("DCRA") on May 5, 2021 and the decisions made therein by the Zoning Administrator. The permit was captioned as "Interior renovation of commercial tenant within the existing structure" for the property at 1323 E Street SE, located in ANC 6B, the Affected ANC by the issuance of the building permit. The building code use is unchanged as Mercantile use, but the underlying zoning use is changed Retail to Wholesaling of Goods. ANC 6B understands that DCRA has requested the applicant to revise this building permit to address some or all of the issues raised in this appeal. At this time, however, that revision has not been submitted and this permit has not been revoked so ANC 6B is forced to appeal this permit to ensure timeliness on first writing of the decisions therein.

Property History

The property is improved with a 5,000 square foot warehouse with a 790 square foot habitable mezzanine. The building was originally constructed in 1960, after the adoption of the first Zoning Regulations in the District of Columbia and was conforming to the regulations regarding parking and loading requirements. The property was zoned C-M-1 and maintained that zoning until the adoption of the 2016 Zoning Regulations when it was renamed to PDR-1. The building is set back 24 feet from the front property line, allowing for parking in the front yard as allowed in the C-M-1/PDR-1 zone. When constructed, the building provided a zoning-compliant loading berth including loading platform on the eastern edge of the building. At some point before 2011, the loading platform was filled in. The loading platform was converted to a landing to access an entry door on the front of the building. Between 2012 and 2015, a ramp was added to this landing which brought the total projection approximately 10 feet from the building façade, reducing the front yard depth to 14 feet where the ramp and landing exist.

The use of this building was consistently various forms of production, distribution and repair from 1960 until 2013. In 2013, the building changed use to retail, as a temporary home for Frager's Hardware as it rebuilt following a catastrophic fire at its location on Pennsylvania Ave SE. The retail use ceased and the building has been vacant since approximately August 2019.

Errors Made by Zoning Administrator

ANC 6B contends the subject building permit violates the Zoning Regulations, specifically related to parking and loading requirements in Subtitle C as well as a smaller technical violation of the use provisions of Subtitle U that could be revised away.

The specific errors made by the zoning administrator are:

- 1) No loading berths are provided on site, when one (1) is required by Subtitle C, Chapter 9 of the Zoning Regulations and one (1) is claimed to be provided by the Permit drawings. Any provided "loading" area without fundamental alterations to the building do not meet the dimensional, transitional setback, location, screening, or loading platform provisions of the Regulations. No site plan or plat was included in the permit application to determine the location of the loading berth to ensure it complies with the zoning regulations but any loading area fails to comply with C-903.5 which requires the loading berth to be entirely on the subject property without projecting into public space

Commented [GU1]: Corey- was a variance granted? Is mention of a lack of variance important? DD claims they inherit the variance.-- AC

2) The building permit does not identify an adjacent loading platform for the required loading berth, where a loading platform is required per C-901.4

3) No zoning-compliant parking spaces are provided on site when three (3) are required per the building permit application. The building permit claims four (4) parking spaces are being provided. Any provided "parking" area of this permit does not meet the dimension or screening requirements of Subtitle C, Chapter 7. No site plan or plat were included in the permit application, to determine the location of the parking spaces to ensure they complied with the zoning regulations but any parking spots on the eastern half of the lot fail to comply C-701.8(a) as the spots can not fit on the lot.

4) The issued permit claims to provide a habitable dwelling unit when one is obviously not being provided and is not noted on the permit drawings. Nonetheless, if a dwelling unit were being provided, it does not comply with U-801.1(w)

The provisions of Subtitle C, Chapter 2 related to existing nonconformities do not apply to these errors alleged above. Based on the initial occupancy and further interior alterations and changes of use, the applicant is not absolved of continuing to provide the required loading and parking which were provided when the building was initially built in 1960 under the 1958 Zoning Regulations.

ANC 6B expects to supplement this statement if or when a Certificate of Occupancy is issued for this property and to incorporate by reference revisions to permit B2103902. If any *new* errors are identified in those certificates of occupancy or permit revisions, ANC 6B expects to supplement this statement within 60 days of first writing of those decisions.

Timeliness

This permit was issued on May 5, 2021. ANC 6B passed a resolution on June 8, 2021 to file this appeal. ANC 6B is filing this appeal on June 30, within 60 days of the issuance of the permit.

How ANC 6B Will Prove Their Case

Appellants will prove the errors made by the zoning administrator through the following methods:

- 1) Analysis of the Zoning Regulations
- 2) Testimony and photographic evidence on past use and alterations to the property
- 3) Expert testimony on the requirements for parking and loading and provisions relates to existing non-conformities
- 4) Current Building Permit Plans
- 5) Historical Certificates of Occupancy and Certificate of Occupancy Applications
- 6) Historic Building Permits, Building Plans, and Building Permit Applications
- 7) Documents from the Surveyor's Office (Subdivisions, Wall checks, A&T lot creation)

Nearly all of the related documents are attached to this filing. ANC 6B has requested one historic building permit for the construction of this building from DCRA. As of filing, ANC 6B has not received this permit from DCRA and will submit it to the record and serve all parties as soon as it does.